

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

OSCAR RODRIGUEZ, et al.,)
)
Plaintiffs,)
)
v.) No. 4:07-MC-447 CAS
)
LAWNS OF DISTINCTION, LTD., et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs' Notice of Non-Compliance and Motion to Set Amount of Fees and Expenses, both filed in response to the Court's Memorandum and Order dated July 29, 2008 (the "Order") (Doc. 23).

Background.

The Order, inter alia,

(1) imposed a fine of \$200.00 per day, beginning July 3, 2008, against defendants John Andrews and Lawns of Distinction, Ltd., jointly and severally, until they purged themselves of contempt by providing to plaintiffs' counsel full and complete written answers to plaintiffs' interrogatories directed to them;

(2) ordered that if defendants failed to purge themselves of contempt as ordered by August 18, 2008, the Court would deal further with this matter by issuing an Order for John Andrews' arrest and indefinite incarceration until such time as he purged himself of contempt as ordered, or by any other means this Court may direct; and

(3) ordered that plaintiffs would be awarded their reasonable attorney's fees and expenses incurred as a result of any failure by defendants to comply with the Court's Orders, and directed plaintiffs to submit a statement of their fees and expenses to the Court for review, together with supporting documentation.

Discussion.

A. Notice of Non-Compliance.

In the Notice of Non-Compliance, plaintiffs state that defendants did not provide any additional information in response to plaintiffs' interrogatories, as had been ordered by the Court. Plaintiffs state that defendant Andrews' mother, Sharon Andrews, mailed plaintiffs' counsel twenty-five pages of documents, but these documents did not provide complete answers to plaintiffs' interrogatories and plaintiffs' counsel so informed Sharon Andrews and explained that they documents were not the signed, written and complete answers to the interrogatories required by the Order.

The Court notes that Mr. Andrews contacted chambers personnel by telephone in mid-August 2008, and inquired about responding to the Order. Mr. Andrews was directed to file his written response to the Order by August 18, 2008, to be in compliance with the Order. The record reflects that Mr. Andrews filed certain documents on August 21, 2008, which the Court ordered returned to him because the filing lacked an appropriate signature, address and certificate of service as required by the Federal Rules of Civil Procedure and this Court's Local Rules. See Doc. 28. Mr. Andrews made no effort to refile his response.

The Court will further address defendants' failure to comply with the Order at the time of the preliminary injunction hearing to be held on October 3, 2008, at 10:30 a.m. in Courtroom No. 12-N. Mr. Andrews shall personally appear at this time and place.

B. Motion to Set Amount of Fees and Expenses.

Pursuant to the Order and Rule 37, Federal Rules of Civil Procedure, plaintiffs seek attorney's fees in the amount of \$3,930.00, representing 26.2 hours of attorney time at the rate of \$150.00 per hour, and expenses of \$735.28, primarily relating to travel by plaintiff's attorney to St. Louis for the contempt hearing held on June 17, 2008. The Court has reviewed the affidavits and supporting information submitted with the motion for fees and expenses and finds that the attorney time was reasonably expended and the expenses were appropriate. Plaintiffs' motion will be granted.

Accordingly,

IT IS HEREBY ORDERED that the Court will further address defendants' failure to comply with the Order at the time of the preliminary injunction hearing to be held on October 3, 2008, at 10:30 a.m. in Courtroom No. 12-N, and that defendant John Andrews shall personally appear at that time and place.

IT IS FURTHER ORDERED that plaintiffs' Motion to Set Amount of Fees and Expenses is **GRANTED** and plaintiffs are awarded the sum of Four Thousand Six Hundred Sixty-Five Dollars and Twenty-Eight Cents (\$4,665.28), consisting of attorney's fees in the amount of \$3,930.00 and expenses of \$735.28, against defendants John Andrews and Lawns of Distinction, Ltd., jointly and severally. [Doc. 27]

IT IS FURTHER ORDERED that defendants John Andrews and Lawns of Distinction, Ltd. shall pay the sum of \$4,668.28 to Texas RioGrande Legal Aid, Inc. by cashier's check or money order by October 23, 2008.

IT IS FURTHER ORDERED that a copy of this Order shall be personally served upon John Andrews and Lawns of Distinction, Ltd. by the United States Marshals Service or by a local law enforcement agency at the direction of the United States Marshals Service.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of September, 2008.